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Legislative History – Montana Session Law

Chapter: 296 Session L: 2015
Bill Number: SB 355

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☒
Final Version of Bill	☒

House

Committee: Natural Resources

Hearing Date(s): 03/23/2015

Committee Report: Concurred as amended 03/31/2015

Senate

Committee: Natural Resources

Hearing Date(s): 02/18/2015

Committee Report: Bill passed 02/24/2015

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Charlotty Herman

Date: 07/28/2026

Notes: No conference committee

4/13	HEARING		
4/15	COMMITTEE EXEC ACTION—CONCURRED AS AMD	16	4
4/15	COMMITTEE REPORT—CONCURRED AS AMD		
4/18	2ND READING CONCURRED	78	22
4/20	3RD READING CONCURRED	75	25
	RETURNED TO SENATE WITH AMENDMENTS		
4/21	2ND READING HOUSE AMDS NOT CONCURRED	50	0
4/21	FC COMMITTEE APPOINTED		
4/21	FC COMMITTEE APPOINTED		
4/22	HEARING		
4/23	HEARING		
4/24	HEARING		
4/24	FC COMMITTEE REPORT RECEIVED		
4/24	FC COMMITTEE REPORT RECEIVED		
4/24	2ND READING FC COMMITTEE REPORT ADOPTED	56	44
4/24	2ND READING FC COMMITTEE REPORT ADOPTED	30	19
4/24	3RD READING FC COMMITTEE REPORT ADOPTED	30	19
4/25	3RD READING FC COMMITTEE REPORT ADOPTED	57	42
4/27	SENT TO ENROLLING		
4/28	RETURNED FROM ENROLLING		
4/28	SIGNED BY PRESIDENT		
4/28	TRANSMITTED TO GOVERNOR		
5/08	VETOED BY GOVERNOR		

SB 355 INTRODUCED BY ANKNEY *LC2207 DRAFTER: NOWAKOWSKI*

REVISE BROWNFIELD SITE CLEAN UP ELIGIBILITY LAWS

2/16	FISCAL NOTE PROBABLE		
2/17	INTRODUCED		
2/17	FISCAL NOTE REQUESTED		
2/17	REFERRED TO NATURAL RESOURCES		
2/18	HEARING		
2/23	FISCAL NOTE RECEIVED		
2/23	COMMITTEE EXEC ACTION—BILL PASSED	10	2
2/23	FISCAL NOTE SIGNED		
2/24	FISCAL NOTE PRINTED		
2/24	COMMITTEE REPORT—BILL PASSED		
2/26	2ND READING PASSED	28	22
2/26	3RD READING PASSED	28	22
	TRANSMITTED TO HOUSE		
3/05	REFERRED TO NATURAL RESOURCES		
3/23	HEARING		
3/30	COMMITTEE EXEC ACTION—CONCURRED AS AMD	10	8
3/31	COMMITTEE REPORT—CONCURRED AS AMD		
4/07	REVISED FISCAL NOTE REQUESTED		
4/09	2ND READING CONCURRED	61	39
4/10	REVISED FISCAL NOTE RECEIVED		
4/10	REVISED FISCAL NOTE SIGNED		
4/10	REVISED FISCAL NOTE PRINTED		
4/10	3RD READING CONCURRED	58	40
	RETURNED TO SENATE WITH AMENDMENTS		
4/14	2ND READING HOUSE AMDS CONCURRED	48	2
4/15	3RD READING PASSED AS AMENDED BY HOUSE	50	0
4/15	SENT TO ENROLLING		
4/16	RETURNED FROM ENROLLING		
4/20	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/20	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
4/24	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 296		
	EFFECTIVE DATE: 4/24/2015 - ALL SECTIONS		

SB 356 INTRODUCED BY FIELDER *LC1784 DRAFTER: BURKHARDT*

REVISE LAW ENFORCEMENT LAWS

2/16	FISCAL NOTE PROBABLE
2/17	INTRODUCED
2/17	FISCAL NOTE REQUESTED
2/17	REFERRED TO JUDICIARY
2/23	HEARING
2/23	FISCAL NOTE RECEIVED

Bill Tracker Login

SB 355: Revise brownfield site clean up eligibility laws

SUMMARY BILL TEXT STATUS FISCAL

AMENDMENTS DOCUMENTS & LINKS

Draft #	LC2207
Bill #	SB 355
Chapter #	296
Amendment(s)	No
Current Status	Chapter Number Assigned
Co-Sponsor(s)	None
Drafter	Nowakowski, Sonja
Requester	Ankney, Duane
Fiscal Note	Yes
Preintroduction Required	No
Category	General Bills
Subject(s)	Environmental Protection, Rule Making
Transmittal Date	02/27/15
Return Date	04/11/15

Sections Affected	Effective Date	Qualifier
All Sections	04/24/2015	

Ankney, Duane
(R) SD 20

Build: 2.59.0

SENATE BILL NO. 355

INTRODUCED BY D. ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE USE OF FEDERAL BROWNFIELDS MONEY AT BROWNFIELDS SITES; ESTABLISHING THE MONTANA BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT; DEFINING TERMS; AMENDING SECTION 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Brownfields Revitalization Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Brownfields sites" means real property where expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous or deleterious substance as defined in 75-10-701.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, or nonprofit organization that has received federal brownfields money from the environmental protection agency.

(4) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(5) "Reasonable steps" means stopping the release of contamination and limiting future human exposure to the release.

(6) (a) "Viable party" means a person with the financial capacity to pay for the assessment and remediation of a petroleum tank release site.

(b) The term does not include an individual who owns or operates a petroleum tank release site where petroleum is no longer dispensed on the site.

NEW SECTION. **Section 3. Findings and intent -- purpose.** The legislature finds that:

(1) real properties exist across the state where the stigma of environmental contamination hinders their development or best use. These contaminated properties are brownfields sites.

(2) the cleanup of brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and to return property to local tax rolls;

(3) current petroleum site eligibility determinations by the department of environmental quality are limiting the use of federal brownfields grant money obtained by grant recipients for assessment and remediation at brownfields sites that include petroleum tank release sites;

(4) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(5) the department should encourage the use of federal brownfields money obtained by grant recipients for assessment and remediation at brownfields sites that include petroleum tank release sites and to leverage federal funds and limit costs imposed on Montana citizens.

NEW SECTION. **Section 4. Brownfields site eligibility at petroleum tank release sites -- limitations.** (1) The department may not deny or limit the use of federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, 115 Stat. 2360, at a petroleum tank release site where the owner or operator, as defined in 75-11-302, at the site:

(a) is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313;

(b) did not cause a release of petroleum contamination by dispensing petroleum at the site;

(c) has taken reasonable steps to address the contamination at the site; or

(d) is not a viable party.

(2) The department may not limit the use of money from the petroleum tank release cleanup fund

established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(3) (a) Except as provided in subsection (3)(b), the department's decision concerning the use of brownfields funding at brownfields sites that include petroleum tank release sites in accordance with this section does not limit or alter the owner or operator's responsibility to assess or remediate a petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the grant recipient proposes timely and comprehensive remediation at a petroleum tank release site using federal brownfields funding, and the proposed remediation meets or exceeds remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation and the use of brownfields money at the petroleum tank release site.

NEW SECTION. **Section 5. Use of brownfields funding acquired by state -- limitations.** Prior to using federal funds awarded to the state from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, 115 Stat. 2360, the department shall:

(1) determine whether a grant recipient has secured federal brownfields money for assessment and remediation of brownfields sites where the money is proposed for use and whether the grant recipient intends to use the money to assess or to remediate the sites; and

(2) obtain written approval from the grant recipient allowing for the use of the federal funds by the department at the brownfields site.

Section 6. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department, subject to [section 4], may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under

this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 5].

NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 355

INTRODUCED BY D. ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REVISING~~ ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT ~~BROWNFIELDS SITES~~ PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING ~~SECTION~~ SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Petroleum Brownfields Revitalization Act".

NEW SECTION. **Section 2. Findings and intent -- purposes.** The legislature finds that:

(1) real properties exist across the state where the stigma of petroleum contamination hinders the development or best use of the property. These petroleum-contaminated properties may be eligible for petroleum brownfields funding.

(2) the cleanup of petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to immediately

address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(4) the department should encourage the use of federal brownfields money obtained by grant recipients for assessment and remediation at eligible petroleum brownfields sites and to leverage federal funds and limit costs imposed on Montana citizens.

NEW SECTION. **Section 3. Definitions -- application.** (1) The definitions used in [sections 1 through 6] are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization Act, Title II of Public Law 107-118.

(2) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) "Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated,

or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and is not subject to a response under the federal Oil Pollution Act.

(i) "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

(j) "Viable responsible party" means a responsible party who is determined by the department in accordance with [section 4] to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site.

NEW SECTION. **Section 4. Viability.** (1) For the purpose of determining the viability of a responsible party, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of the petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is a grant recipient's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party.

NEW SECTION. **Section 5. Brownfields site eligibility at petroleum tank release sites -- determinations and limitations.** (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible for petroleum

brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site.

NEW SECTION. **Section 6. Use of petroleum brownfields funding acquired by state -- limitations.** Prior to expending federal funds awarded to the state for the purpose of assessing or cleaning up petroleum tank release sites that are eligible for petroleum brownfields funding from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, the department shall make a reasonable effort to coordinate with a grant recipient who may intend to expend federal brownfields funding to assess or remediate eligible petroleum brownfields sites in the grant recipient's brownfields target area and to ensure that the grant recipient is not intending to expend petroleum brownfields funding at the same eligible brownfields sites.

Section 7. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508(3)(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are

determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, including a grantor; ~~and~~

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) costs that the board has determined are not actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 8. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department, subject to [section 5(4)(b)], may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may

not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall

serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 6].

NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

- END -

AN ACT ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Petroleum Brownfields Revitalization Act".

Section 2. Findings and intent -- purposes. The legislature finds that:

(1) real properties exist across the state where the stigma of petroleum contamination hinders the development or best use of the property. These petroleum-contaminated properties may be eligible for petroleum brownfields funding.

(2) the cleanup of petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to immediately address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(4) the department should encourage the use of federal brownfields money obtained by grant recipients

for assessment and remediation at eligible petroleum brownfields sites and to leverage federal funds and limit costs imposed on Montana citizens.

Section 3. Definitions -- application. (1) The definitions used in [sections 1 through 6] are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization Act, Title II of Public Law 107-118.

(2) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) "Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated, or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and

is not subject to a response under the federal Oil Pollution Act.

(i) "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

(j) "Viable responsible party" means a responsible party who is determined by the department in accordance with [section 4] to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site.

Section 4. Viability. (1) For the purpose of determining the viability of a responsible party, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of the petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is a grant recipient's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party.

Section 5. Brownfields site eligibility at petroleum tank release sites -- determinations and limitations. (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been

determined by the department or the United States environmental protection agency to be eligible for petroleum brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site.

Section 6. Use of petroleum brownfields funding acquired by state -- limitations. Prior to expending federal funds awarded to the state for the purpose of assessing or cleaning up petroleum tank release sites that are eligible for petroleum brownfields funding from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, the department shall make a reasonable effort to coordinate with a grant recipient who may intend to expend federal brownfields funding to assess or remediate eligible petroleum brownfields sites in the grant recipient's brownfields target area and to ensure that the grant recipient is not intending to expend petroleum brownfields funding at the same eligible brownfields sites.

Section 7. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508(3)(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, including a grantor; ~~and~~

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) costs that the board has determined are not actual, reasonable, and necessary costs of responding

to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an

agent to receive the reimbursement for eligible costs incurred by the grantor; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 8. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other

source, the department, subject to [section 5(4)(b)], may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and

substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing

the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 6].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were

incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

SB 0355, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day

of _____, 2015.

Speaker of the House

Signed this _____ day

of _____, 2015.

SENATE BILL NO. 355

INTRODUCED BY D. ANKNEY

AN ACT ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	SB0355	**Title:**	Revise brownfield site clean up eligibility laws
Primary Sponsor:	Ankney, Duane	**Status:**	As Introduced

☑ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☑ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 355 has no impact to the state.

FISCAL ANALYSIS

Assumptions:

1. SB 355 will not have a fiscal impact to DEQ because the program already reviews and works closely with grant recipients on eligibility determinations and coordination of brownfields sites.
2. A clean up funded through the brownfields fund may not be reimbursed through the Petroleum Tank Release Compensation Board (PTRCB). PTRCB oversees reimbursement and the board is administratively attached to DEQ. PTRCB provides financial resources to meet financial assurance requirements and funding for clean-up of petroleum storage tank facilities.

Effect on County or Other Local Revenues or Expenditures:

1. Potential loss of federal brownfields funding to grant recipients across the state (approximately $5,000,000) because the proposed bill would provide for use of funds at sites that do not meet eligibility criteria.

Long-Term Impacts:

1. Potential loss of federal brownfields funding to grant recipients across the state (approximately $5,000,000) because the proposed bill would allow for use of funds at sites that do not meet eligibility criteria.

Technical Notes:

1. Brownfields monies are granted to the state subject to conditions imposed by federal law and EPA guidelines. The following criteria in SB 355 are not consistent with federal requirements: definition of "viable party"; definition of "reasonable steps"; eligibility of owners of active gas stations.
2. Section 4(2) provides that DEQ may not limit the use of petroleum tank release compensation funds. Under current law, use of those funds is controlled by the Petroleum Tank Release Compensation Board, not DEQ. SB 355 would not change that.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	SB0355	**Title:**	Revise brownfield site clean up eligibility laws
Primary Sponsor:	Ankney, Duane	**Status:**	As Amended in House Committee

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: SB 355 bill has no fiscal impact to the Department of Environmental Quality (DEQ) or the Petroleum Tank Release Compensation Board.

FISCAL ANALYSIS

Assumptions:

1. SB 355 will not have a fiscal impact to DEQ because the program already reviews and works closely with grant recipients on eligibility determinations and coordination of brownfields sites.
2. The Petroleum Tank Release Compensation Board provides financial resources from the Petroleum Tank Release Cleanup Fund to reimburse certain owners or operators for eligible cleanup costs of petroleum storage tank facilities. Cleanup costs reimbursed through a brownfields grant are not reimbursed from the Petroleum Tank Release Cleanup Fund.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

MINUTES

MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Chas Vincent, on February 18, 2015 at 3:00 PM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Chas Vincent, Chair (R)
Sen. Rick Ripley, Vice Chair (R)
Sen. John Brenden (R)
Sen. Pat Connell (R)
Sen. Jennifer Fielder (R)
Sen. Bradley Hamlett (D)
Sen. Brian Hoven (R)
Sen. Christine Kaufmann (D)
Sen. Jim Keane (D)
Sen. Cliff Larsen (D)
Sen. Mike Phillips (D)

Members Excused: Sen. Duane Ankney (R)

Members Absent: None

Staff Present: Taylor Fridrich, Committee Secretary
Sonja Nowakowski, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 323, 2/16/2015; SB 325, 2/16/2015; SB 329, 2/16/2015; SB 355, 2/16/2015
Executive Action:	SB 261 - Do Pass as Amended SB 118 - Do Pass as Amended SB 215 - Be Tabled SB 218 - Be Tabled SB 273 - Be Tabled

HEARING ON SB 325

Opening Statement by Sponsor:

00:01:56 Sen. Jim Keane (D), SD 38, opened the hearing on SB 325, Revise process for adopting water quality regulations.

Proponents' Testimony:

00:05:32 Matt Moore, Butte Silver Bow
00:08:09 Leo Berry, Great Northern Properties (GNP)
00:08:58 Dave Galt, executive director, Montana Petroleum Association (MPA)
00:09:21 Bud Clinch, executive director, Montana Coal Council
00:09:57 Larry Bonderud, mayor, City of Shelby

Opponents' Testimony:

00:10:24 Beth Kaeding, Northern Plains Resource Council (NPRC)
EXHIBIT(nas37a01)

00:14:03 Derf Johnson, Montana Environmental Information Center (MEIC)
EXHIBIT(nas37a02)

00:16:51 Shelbi Dantic, Montana Conservation Voters (MCV)
00:17:10 Ron Brey, self
00:17:50 Claudia Narcisco, self
00:21:03 Mary LaPorte, self
00:22:07 Wendy Marsh, self
00:22:31 Brenda Lindlief-Hall, Tongue River Water Users Association (TRWUA)
00:24:59 Amy Seaman, Montana Audubon (MA)

Informational Testimony:

00:26:01 George Mathieus, Department of Environmental Quality (DEQ)

Questions from Committee Members and Responses:

00:26:24 Sen. Phillips
00:27:09 Mr. Mathieus, DEQ
00:27:36 Sen. Phillips
00:27:59 Mr. Mathieus
00:28:08 Sen. Phillips
00:28:50 Sen. Keane
00:29:35 Sen. Kaufmann
00:30:00 Mr. Johnson, MEIC
00:31:02 Sen. Ripley
00:31:54 Ms. Lindlief-Hall, TRWUA

00:32:48 Sen. Brenden left the hearing.

00:33:02 Sen. Ripley
00:33:20 Ms. Lindlief-Hall
00:33:27 Sen. Ripley
00:33:43 Ms. Lindlief-Hall
00:34:09 Sen. Hamlett
00:34:35 Sen. Phillips
00:35:03 Sen. Keane
00:35:37 Sen. Phillips
00:35:53 Sen. Keane
00:36:06 Sen. Kaufmann
00:36:39 Mr. Mathieus
00:37:42 Sen. Kaufmann
00:38:12 Sen. Keane
00:38:42 Chairman Vincent
00:38:52 Sen. Hoven
00:39:36 Mr. Mathieus
00:40:14 Sen. Phillips
00:40:44 Mr. Mathieus
00:40:54 Sen. Phillips
00:41:00 Mr. Mathieus
00:41:29 Sen. Phillips
00:41:59 Mr. Mathieus
00:42:17 Sen. Larsen
00:42:53 Mr. Mathieus
00:43:20 Chairman Vincent
00:43:39 Ms. Lindlief-Hall
00:44:07 Chairman Vincent
00:44:29 Ms. Lindlief-Hall
00:45:29 Chairman Vincent
00:45:37 Ms. Lindlief-Hall
00:46:38 Chairman Vincent
00:47:02 Ms. Lindlief-Hall
00:48:20 Chairman Vincent
00:48:51 Sen. Keane
00:48:58 Chairman Vincent

Closing by Sponsor:

00:49:07 Sen. Keane
00:51:30 Sen. Phillips

HEARING ON SB 323

Opening Statement by Sponsor:

00:52:22 Sen. Jennifer Fielder (R), SD 7, opened the hearing on SB 323, Require state intervention in federal projects.

Proponents' Testimony: None

Opponents' Testimony: None

00:57:23 Bob Harrington, administrator, Forestry Division, Department of Natural Resources and Conservation (DNRC)
01:01:08 Stan Frasier, Helena Hunters and Anglers Association (HHAA)
01:04:50 Claudia Narcisco, self

Informational Testimony:

01:07:56 Jon Bennion, Department of Justice (DOJ)

Questions from Committee Members and Responses:

01:08:11 Sen. Keane
01:08:35 Mr. Bennion, DOJ
01:09:15 Sen. Keane
01:09:28 Mr. Bennion
01:09:54 Sen. Kaufmann
01:10:10 Mr. Bennion
01:10:55 Sen. Kaufmann
01:11:08 Mr. Bennion
01:11:45 Sen. Kaufmann
01:11:58 Mr. Bennion
01:12:34 Sen. Connell
01:13:10 Mr. Harrington, DNRC
01:14:41 Sen. Connell
01:15:04 Mr. Harrington
01:15:45 Sen. Connell
01:16:18 Mr. Harrington
01:16:56 Sen. Phillips
01:17:30 Mr. Bennion
01:18:29 Sen. Phillips
01:18:46 Mr. Bennion
01:18:51 Sen. Phillips
01:19:17 Sen. Fielder
01:19:36 Chairman Vincent
01:21:23 Mr. Harrington
01:23:45 Chairman Vincent
01:24:46 Mr. Harrington
01:25:13 Chairman Vincent
01:25:51 Mr. Harrington
01:26:48 Chairman Vincent
01:27:22 Mr. Frasier, HHAA
01:27:36 Chairman Vincent
01:29:48 Mr. Frasier
01:31:20 Chairman Vincent
01:31:29 Mr. Frasier
01:31:39 Chairman Vincent
01:32:09 Sen. Kaufmann
01:32:18 Chairman Vincent

01:32:47 Sen. Hamlett
01:33:35 Mr. Bennion
01:34:24 Sen. Hamlett
01:34:46 Mr. Bennion

Closing by Sponsor:

01:35:53 Sen. Fielder

HEARING ON SB 329

Opening Statement by Sponsor:

01:43:17 Sen. Pat Connell (R), SD 43, opened the hearing on SB 329, Limit liability for aviation on state lands.

Proponents' Testimony:

01:45:27 Carmine Mowbray, Recreational Aviation Foundation (RAF)
EXHIBIT(nas37a03)

01:48:34 Chuck Flynn, Montana Pilots Association (MPA)

Opponents' Testimony:

01:49:03 Al Smith, Montana Trial Lawyers Association (MTLA)

Informational Testimony:

01:51:29 Shawn Thomas, Department of Natural Resources and Conservation (DNRC)
01:51:43 Debbie Alke, Department of Transportation (MDT)

Questions from Committee Members and Responses:

01:52:04 Sen. Keane
01:52:21 Ms. Alke, MDT
01:52:27 Sen. Phillips
01:52:55 Sen. Connell
01:53:45 Chairman Vincent
01:53:56 Sen. Connell

Closing by Sponsor:

01:54:48 Sen. Connell

01:56:07 Recess

02:10:00 Reconvene

EXECUTIVE ACTION ON SB 261

02:10:18 **Motion:** Sen. Hamlett moved that **SB 261 DO PASS**.

02:10:41 **Motion:** Sen. Connell moved that **SB 261 BE AMENDED**.
EXHIBIT(nas37a04)

Discussion:

02:11:36 Sen. Phillips

02:12:09 **Vote:** Motion carried unanimously by voice vote. Sen. Ankney voted by proxy. Sen Brenden was excused.

02:12:33 **Motion:** Sen. Hamlett moved that **SB 261 DO PASS AS AMENDED**.

02:12:54 **Motion:** Sen. Hamlett moved that **SB 261 BE AMENDED**.
EXHIBIT(nas37a05)

Discussion:

02:13:05 Sonja Nowakowski, research analyst, Legislative Services Division (LSD)

02:13:52 **Vote:** Motion carried unanimously by voice vote. Sen. Ankney voted by proxy. Sen Brenden was excused.

02:14:08 **Motion:** Sen. Hamlett moved that **SB 261 DO PASS AS AMENDED**.

Discussion:

02:14:19 Sen. Fielder
02:15:18 Sen. Hamlett
02:15:53 Sen. Connell
02:17:45 Sen. Fielder
02:18:25 Sen. Hamlett
02:18:33 Sen. Ripley
02:19:05 Sen. Hamlett

02:19:50 **Vote:** Motion carried 10-2 by roll call vote with Sen. Brenden and Sen. Fielder voting no. Sen. Ankney and Sen. Brenden voted by proxy.

EXECUTIVE ACTION ON SB 215

02:21:01 **Motion:** Sen. Fielder moved that **SB 215 DO PASS**.

02:22:03 **Substitute Motion/Vote:** Sen. Ripley made a substitute motion that **SB 215 BE TABLED**. Substitute Motion carried 11-1 by roll call vote with Sen. Fielder voting no. Sen. Ankney and Sen. Brenden voted by proxy.

EXECUTIVE ACTION ON SB 218

02:24:57 **Motion:** Sen. Ripley moved that **SB 218 BE TABLED**.

Discussion:

02:25:12 Sen. Kaufmann
02:25:31 Chairman Vincent

02:25:46 **Substitute Motion:** Sen. Kaufmann made a substitute motion that **SB 218 DO PASS**.

Discussion:

02:26:28 Sen. Phillips
02:26:47 Sen. Kaufmann
02:27:53 Sen. Fielder
02:28:24 Sen. Larsen

02:29:13 **Vote:** Substitute motion failed 2-10 by roll call vote with Sen. Kaufmann and Sen. Phillips voting aye. Sen. Ankney and Sen. Brenden voted by proxy.

02:30:19 **Vote:** Motion to table carried 9-1 by voice vote with Sen. Kaufmann voting no. Sen. Ankney and Sen. Brenden were excused.

EXECUTIVE ACTION ON SB 118

02:30:47 **Motion:** Sen. Hamlett moved that **SB 118 DO PASS**.

02:30:59 **Motion/Vote:** Sen. Hamlett moved that **SB 118 BE AMENDED**. Motion carried 11-0 by voice vote. Sen. Ankney voted by proxy. Sen. Brenden was excused.

02:31:54 **Motion:** Sen. Hamlett moved that **SB 118 DO PASS AS AMENDED**.

Discussion:

02:32:03 Chairman Vincent
02:32:45 Sen. Phillips

02:32:58 Sen. Ankney entered the hearing.

02:33:13 Sen. Hamlett

02:35:38 **Vote:** Motion carried 6-5 by roll call vote with Sen. Ankney, Sen. Kaufmann, Sen. Keane, Sen. Ripley and Sen. Vincent voting no. Sen. Brenden was excused.

EXECUTIVE ACTION ON SB 273

02:36:28 **Motion:** Sen. Fielder moved that **SB 273 DO PASS**.

Discussion:

02:36:41 Sen. Keane
02:36:57 Sen. Fielder
02:37:59 Chairman Vincent
02:39:19 Sen. Hamlett

02:39:45 **Vote:** Motion failed 4-8 by roll call vote with Sen. Brenden, Sen. Fielder, Sen. Hamlett and Sen. Hoven voting aye. Sen. Brenden voted by proxy.

02:40:42 **Motion/Vote:** Sen. Keane moved that **SB 273 BE TABLED AND THE VOTE REVERSED**. Motion carried unanimously by voice vote of those present and voting.

HEARING ON SB 355

Opening Statement by Sponsor:

02:41:27 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 355, Revise brownfield site clean up eligibility laws.

EXHIBIT(nas37a06)

Proponents' Testimony:

02:47:40 Rep. Bridgett Smith, HD 31
02:48:14 Chris Cerquone, Montana Economic Developers Association (MEDA)
02:52:44 Martin DeWitt, Great Northern Development Corporation (GNDC)
02:56:04 Reuben Vincent, Great Northern Development Corporation (GNDC)
02:58:42 Jason Rittal, president, Montana Economic Developers Association (MEDA)

Opponents' Testimony:

03:00:12 Kathie Bailey, executive director, Snowy Mountain Development Corporation (SMDC)
03:04:39 Brian Obert, executive director, Montana Business Assistance Connection (MBAC)
03:06:38 Jenny Chambers, administrator, Remediation Division, Department of Environmental Quality, (DEQ)
03:11:17 Karen Sweeney, Snowy Mountains Development Corporation (SMDC)

Informational Testimony: None

Questions from Committee Members and Responses:

03:14:16 Sen. Ripley
03:14:36 Ms. Chambers, DEQ

03:15:33 Sen. Ripley
03:16:26 Sen. Ripley
03:16:31 Ms. Chambers
03:16:59 Sen. Ripley
03:17:30 Ms. Chambers
03:17:56 Sen. Ripley
03:18:33 Mr. DeWitt, GNDC
03:19:53 Sen. Ripley
03:20:07 Mr. DeWitt
03:20:24 Mr. Cerquone, MEDA
03:21:29 Sen. Ripley
03:21:51 Ms. Chambers
03:22:41 Sen. Ripley
03:22:52 Ms. Chambers
03:23:31 Sen. Keane
03:24:13 Ms. Chambers
03:25:22 Sen. Keane
03:26:02 Ms. Chambers
03:26:11 Sen. Keane
03:26:27 Ms. Chambers
03:26:41 Sen. Hamlett
03:27:24 Sen. Ankney
03:27:27 Sen. Fielder
03:27:48 Ms. Bailey, SMDC
03:30:06 Sen. Fielder
03:30:15 Ms. Bailey

Closing by Sponsor:

03:30:47 Sen. Ankney

Committee Business:

03:34:02 Chairman Vincent
03:35:35 Sen. Phillips
03:35:45 Sen. Fielder
03:36:35 Sen. Keane
03:36:45 Sen. Kaufmann
03:37:25 Chairman Vincent

ADJOURNMENT

Adjournment: 6:46 P.M.

_____
Taylor Fridrich, Secretary

tf

Additional Documents:

EXHIBIT(nas37aad.pdf)

SENATE Natural Resources
EXHIBIT NO. 6
DATE 2/18/15
Bill No. SB 355

SENATE NATURAL RESOURCES
Exhibit No. 6
Date 2/18/15
Bill No. SB 355

PETROLEUM BROWNFIELDS ASSESSMENT GRANT FUNDING ELIGIBITY FLOW CHART

Is there reason to believe that petroleum products were dispensed, stored, or disposed of on the immediately adjacent to the site?

NO → **Not Eligible**

YES ↓

Is the site relatively low risk:
a. Currently receiving LUST/Trust funds?
b. Subject to response under the Oil Pollution Act?

YES →

NO ↓

Has there been a judgment rendered, administrative order, enforcement action, or citizen or third party claim brought against the owner?

YES → **Not Eligible**

NO ↓

MONTANA DEQ ELIGIBILITY REVIEW PROCESS

Is there a Responsible Party (RP) as defined under state law?

1. Has a RP been identified by judgment, administrative order, or enforcement action?
2. **Did the current owner dispense or dispose of petroleum at the site, regardless of whether contamination was created?**
3. Did the owner exacerbate contamination at the site?
4. **Has the petroleum release been deemed Petrofund eligible?**
5. **Has the current owner taken reasonable steps with regard to the contamination (i.e. did owner fail to take actions as directed by DEQ)?**

If all requirements are met ↓

If any of requirements are not met ↓

MDEQ VIABLE PARTY DETERMINATION

Is the responsible party financially capable of assessing and cleaning up the petroleum?

Financial viability is determined by MDEQ through review of 5 years of complicated financial records including income statements, financial data, and possibly an Auditors opinion

NO ↓ **Eligible**

YES ↓ **Not Eligible**

EPA ELIGIBILITY REVIEW PROCESS

Is there a Responsible Party (RP) as defined under EPA brownfields guidance?

1. Has a RP been identified by judgment, administrative order, or enforcement action?
2. Did the current or immediate past owner dispense or dispose of petroleum which resulted in contamination at the site?
3. Did current or immediate past owner exacerbate contamination at site?
4. Has the current or immediate past owner take reasonable steps with regard to the contamination (i.e. did owner stop release and prevent future exposures)?

If all requirements are met ↓

If any of requirements are not met ↓

EPA VIABLE PARTY DETERMINATION

Is the responsible party financially capable of assessing and cleaning up the petroleum?

1. Is the site owned by an individual or entity that cannot afford the cleanup?

If Yes ↓ **Eligible**

If No ↓ **Not Eligible**

Note:

This flow chart presents the steps involved in obtaining the approval to use federal brownfields assessment grants on petroleum sites. A determination of brownfields funding eligibility in no way effects whether an owner is liable to assess a site under state law, but only whether federal brownfields grant funds can be used on the site to assess or cleanup the petroleum release.

Montana State Legislature

2015 SESSION

ADDITIONAL DOCUMENTS

Business Page

[Signed by Chairman]

Roll Call

Standing Committee Reports

Tabled Bills

Fiscal Reports

Rolls Call Votes

Proxy Forms

Visitor Registrations

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

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BUSINESS REPORT

MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION

SENATE NATURAL RESOURCES COMMITTEE

Date: Wednesday, February 18, 2015
Place: Capitol

Time: 3:00 PM
Room: 303

BILLS and RESOLUTIONS HEARD:

SB 323 - Require state intervention in federal projects - Sen. Jennifer Fielder
SB 325 - Revise process for adopting water quality regulations - Sen. Jim Keane
SB 329 - Limit liability for aviation on state lands - Sen. Pat Connell
SB 355 - Revise brownfield site clean up eligibility laws - Sen. Duane Ankney

EXECUTIVE ACTION TAKEN:

SB 261 - Do Pass as Amended
SB 118 - Do Pass as Amended
SB 215 - Be Tabled
SB 218 - Be Tabled
SB 273 - Be Tabled

Comments:

Chas Vincent

SEN. Chas Vincent, Chair

This is roll call for Senate Nat. Resources
Feb 18th 2015

MONTANA STATE SENATE
Roll Call
NATURAL RESOURCES COMMITTEE

DATE: Feb 18th 2015

NAME	PRESENT	ABSENT/ EXCUSED
SENATOR RICK RIPLEY, VICE CHAIR	X	
SENATOR CHRISTINE KAUFMANN	X	
SENATOR DUANE ANKNEY		X
SENATOR JOHN BRENDEN	X	
SENATOR PAT CONNELL	X	
SENATOR JENNIFER FIELDER	X	
SENATOR BRADLEY MAXON HAMLETT	X	
SENATOR BRIAN HOVEN	X	
SENATOR JIM KEANE	X	
SENATOR CLIFF LARSEN	X	
SENATOR MIKE PHILLIPS	X	
SENATOR CHAS VINCENT, CHAIR	X	

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Natural Resources** report that **Senate Bill 261** (first reading copy -- white) **do pass as amended**.

Signed: Chas Vincent
Senator Chas Vincent, Chair

And, that such amendments read:

1. Page 5.
Following: line 3
Insert: "(4) The oversight team shall seek a depredation order from the United States fish and wildlife service under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (Corvus corax) or black-billed magpie (Pica hudsonia) to reduce depredation on sage grouse populations and their nests."

2. Page 5, line 21.
Following: "generate credits"
Insert: "that are available for compensatory mitigation under [section 9]"

3. Page 7.
Following: line 13
Insert: "(5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation under [section 9] only those credits attributable to funds awarded pursuant to this section and any unrestricted matching funds."

- END -

Committee Vote:
Yes 10, No 2
Fiscal Note Required X

SB0261001SC.spt

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Natural Resources** report that **Senate Bill 118** (first reading copy -- white) **do pass as amended**.

Signed: Chas Vincent
Senator Chas Vincent, Chair

And, that such amendments read:

1. Title, page 1, line 5.
Following: "RIGHT;"
Insert: "REQUIRING NOTICE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION IN CASE OF DISRUPTION;"

2. Page 2, line 3.
Strike: "are"
Insert: "is"

3. Page 2, line 5.
Following: "right."
Insert: "In the event that the means of conveyance is disrupted, impeded, or otherwise blocked, the appropriator shall notify the department by certified mail of the disruption, impediment, or blockage."

- END -

Committee Vote:
Yes 6, No 5
Fiscal Note Required __

SB0118001SC.spt

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE NATURAL RESOURCES COMMITTEE

The **SENATE NATURAL RESOURCES COMMITTEE** TABLED

SB 215 - Revise public land laws - Sen. Jennifer Fielder
SB 218 - Increase bond for certain metal mines - Sen. Mary Sheehy Moe
SB 273 - Revise soil and conservation district laws - Sen. Jennifer Fielder

by motion, on **Wednesday, February 18, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Nadine Spencer
(For the Committee)

(For the Secretary of the Senate)

9:05 / 2/21
(Time) (Date)

February 21, 2015 (9:00am) Taylor Fridrich, Secretary Phone: 444-1619

MONTANA STATE SENATE
Visitors Register
SENATE NATURAL RESOURCES COMMITTEE

Wednesday, February 18, 2015
SB 355 - Revise brownfield site clean up eligibility laws
Sponsor: **Sen. Duane Ankney**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Jenny Chambers	MT DEQ		✓	
PAUL TUSS	Bear Paw Development	X		
Martin DeWitt	Great Northern Development	X		
Renzen Vincent	" " "	X		
Ray Bowden	City of Shelby	X		
Jason Ritzel	Eastern Plains EDC	X		
Karen Sweeney	Snowy Mtn. Dev. Corp.		✓	
Kathie Bailey	Snowy Mtn. Dev. Corp.		✓	
Brian Obert	Montana Business Assistance		✓	
Chris Cevarge	NewFields Companies	X		
Rep Bridget Smith	HD 31	X		
Terry Wadsworth	Petro-Board			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Additional Documents
SENATE: Natural Resources
Date: 2/18/15
Bill No. SB 355

Fridrich, Taylor

From: Nowakowski, Sonja
Sent: Monday, February 23, 2015 1:28 PM
To: Fridrich, Taylor
Subject: FW: letter

Hi Taylor,
Can you provide a copy of this as requested in the email?
Thanks,
Sonja

From: Jason Rittal [mailto:jrittal@midrivers.com]
Sent: Monday, February 23, 2015 1:24 PM
To: Nowakowski, Sonja
Cc: 'Duane Ankney'
Subject: FW: letter

Sonja,

I was going to forward this email for Ms. Lantis to the committee members but I cannot find Senator Keane's email and it is too long to submit via the leg site so I will leave it to you to help me out if you would.

Thanks,

Jason Rittal

From: Leann Lantis [mailto:lantis@midrivers.com]
Sent: Monday, February 23, 2015 12:53 PM
To: jrittal@midrivers.com
Subject: letter

Chairman Vincent & Members of the Committee:

My name is Leann Lantis. My husband and I bought the 4-Corners convenience store in our lifelong hometown of Terry in late 2013. Shortly after our purchase we were notified that an inspection of our underground storage tanks would be forthcoming. Please keep in mind that the tanks in the ground at that time were replaced in 1998 a relatively short time in the expected lifespan of the tank.

Upon inspection the department determined that the two Underground Storage Tanks did not have a valid form of leak detection and that a reportable suspect release event is triggered and they directed us to empty the tanks and conduct a Tank Tightness Test to determine if either tank is releasing product.

The tests came back that no product was being released to the environment (the tanks were not leaking). Options were discussed but because underground water was found entering the interstice between the first and second walls of the tanks they could not be repaired but rather had to be replaced. As you can imagine after having just purchased the facility this news was quite a blow, in fact it was over a $300,000 blow.

During our effort to finance the removal and replacement of the tanks we engaged the Eastern Montana Brownfield Coalition (EMBC) via our Certified Regional Development Corporation, Eastern Plains EDC, in the hopes that some sort of financing could be made available. After several discussions regarding Brownfield

eligible expenditures it was determined that the program could not assist with the tank replacement but removal of the old tanks could be a way that the Brownfield program could assist. It was a small ticket item ($30,000 or so), but frankly at this point in our efforts to secure money to fix the problems it would have been a great help.

DEQ gave us a 90 day temporary permit to get all this figured out and new tanks on the way.....a very limited time period considering we had just purchased the business. Knowing that the Brownfield Coalition quickly sent a request for approval of the site as brownfield eligible to the state DEQ so that the removal of the old tanks could be considered by EPA as a project under the EMBC program. Multiple discussions with EPA, as their funder, occurred to get EPA's opinion on the project and whether it would be a fit. Verbal determinations were that it would be but that it needed to go through MT DEQ first.

In the end DEQ would not determine my site Brownfield Eligible and here is what I was told as to why:

1. Our site is Petrofund eligible and thereby Brownfield ineligible.
2. We are an operating gas station and thereby not Brownfield eligible because we are dispensing fuel, even though there was no evidence of contamination caused by our dispensing.
3. Our $300,000 plus investment in our business was not considered expansion, redevelopment or reuse.

I do not know the rules related to Brownfield eligibility but I can tell you that we consider the property expanded and it certainly came very close to being abandoned. We also knew that it was a Petrofund site but the state has made no effort or indication that anything will ever happen in regards to that. It has been so long no one even thinks about it anymore. What does that eligibility have to do with whether or not federal EPA funds can be used on a project? The last thing is maybe the most disturbing.....is the DEQ is saying that every operating gas station in Montana is contaminating the environment? I take offense to that premise if they do.

Please vote yes on SB 355. It won't help my facility or family as that opportunity has come and gone but it may help the next facility in rural Montana with a family just trying to keep a vital service open and provide for their family.

Regards,

Leann Lantis
Small Business Owner
4-Corners Convenience Store – Terry MT

Additional Documents
SENATE: Natural Resources
Date: 2/18/15
Bill No. SB 355

February 19, 2015

Senator Chas Vincent, Chairman
Senate Natural Resources Committee
State Capitol Building
Helena, MT 59620-1704

Dear Senator Vincent,

I am writing this letter in support of Senate Bill 355. As the property owner of a contaminated site who did not cause or create the contamination and have taken the necessary steps to limit contamination, it is my understanding that I should be eligible for Federal Brownfields Assistance.

When the Eastern Montana Brownfields Coalition (EMBC) informed me that my property was sent to them by the Department of Environmental Quality (MT DEQ) as one of over 40 potentially eligible properties to receive Brownfields assistance in Eastern Montana, I was ecstatic and relieved. As a potentially eligible site, the next step was to submit an application to DEQ for eligibility. After taking all necessary steps to complete and submit the application I was informed that my property was denied mainly because the site is Petrofund eligible. This I do not understand nor agree with. Why does the MT DEQ require that state funds be spent in preference to federal funds that are available to do the same work?

I believe that Senate Bill 355 is necessary to protect state resources, and wisely spend federal funding before state dollars. Without this bill it is my understanding that not one of the over 40 sites on the list sent to EMBC would be eligible if MT DEQ continues to consistently apply their administrative rules unchecked. How is it that a state agency can send out a list of potential sites and there is a good likelihood that none will be eligible?
As a property owner that has been inquiring to the MT DEQ about my site for over 14 years as to what my options for assessment and remediation are, I fully support Senate Bill 355. This Bill would remove road blocks and allow honest hard working citizens like myself who did not create contaminated sites with the option of simply accessing the federal Brownfields Program.

The current process of ever shifting goal posts by the MT DEQ makes no sense environmentally or economically. Senate Bill 355 is necessary to provide relief for honest hard working people who are being unjustly discriminated against.

Thank you for your time and consideration on this extremely important matter.

Sincerely,

Butch Grenz

Butch Grenz
Miles City

Additional Documents
SENATE: Natural Resources
Date: 2/18/15
Bill No. SB 355

Nicholas Sovner
PO Box 212
Helena, MT 59601

February 23, 2015

Senator Chas Vincent, Chair
2015 Senate Committee: Natural Resources
Montana State Capitol
Helena, MT 59620-0500

Subject: Opposition to House Bill 355

Dear Senator Vincent:

This letter is in direct opposition to House Bill 355 regarding State of Montana's authorization for the spending of Environmental Protection Agency (EPA) Petroleum Brownfields grant funds on leaking underground storage tank sites eligible for reimbursement by the Montana Petroleum Tank Release Compensation Fund. I have worked in the environmental remediation field for over 7 years, and was previously the Petroleum Brownfields Coordinator at the Montana Department of Environmental Quality (MDEQ). I currently work in the private sector as a consultant and continue to work on Brownfields sites in Montana.

This bill would undermine the integrity of the Brownfields program in our State by encouraging our economic development corporations to be out of compliance with their EPA grant requirements. The list below outlines my concerns.

- This bill does not promote or encourage fiscal responsibility; but rather encourages unnecessary expenditures through removal of the Department's ability to deny or limit expenditures that exceed remediation standards; thus allocating unnecessary funding on a project while preventing other projects from occurring due to the finite resources available.
- This legislation is not consistent with the terms and conditions of the cooperative agreement of the grant recipient and potentially could place the grant recipients in risk of noncompliance with EPA and loss of programs.
- Owner/operators that are currently dispensing petroleum should be held accountable for their business and responsible for petroleum releases on their property. This legislation removes that liability and places the financial burden on the taxpayer; whether through federal or state funds.

Thank you for the opportunity to share my opinions on this matter.

Sincerely,

Nicholas Sovner

Local EPA Brownfields Grantees in Support of SB-355			
EPA Grantee	**Brownfield Area (Counties)**	**Population in Brownfield Area**	**Current Available Funds**
Eastern Montana Brownfields Coalition (Great Northern Development, Eastern Plans Economic Development Corp., SE MT Development Corporation)	Sheridan, Roosevelt, McCone, Daniels, Valley, Carbon, Custer, Fallon, Prairie, Rosebud, Wibaux, Dawson, Garfield, Carter, and Powder River; and the Fort Peck and Northern Cheyanne Indian Reservations	76,574	$2.1 million ($600,000 Assessment and $1.5 million RLF cleanup grant)
Bear Paw Development Corporation	Hill, Blaine, Chouteau, Phillips, Liberty, including Fort Belknap and Rocky Boys Indian Reservations	35,569	$1.4 million ($400,000 Assessment and $1.0 million RLF cleanup grant)
Sweetgrass Development Corporation	Toole, Glacier, Pondera, Cascade, including Blackfeet Reservation	107,472	$400,000 Assessment grant [1]
Big Sky Economic Development	Yellowstone	154,162	$400,000 Assessment grant
Great Falls Development Authority	Cascade	82,384	$1.0 million RLF, $400,000 Assessment grant [1]
TOTALS	**26 Counties**	**456,161**	**$5.7 Million**

[1] - Applied for grant in December 2014

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
64th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: Chair Kerry White, on March 23, 2015 at 3:00 PM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Kerry White, Chair (R)
Rep. Steve Fitzpatrick, Vice Chair (R)
Rep. Ed Lieser, Vice Chair (D)
Rep. Gerald (Jerry) Bennett (R)
Rep. Bob Brown (R)
Rep. Zach Brown (D)
Rep. Virginia Court (D)
Rep. Kelly Flynn (R)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Dale Mortensen (R)
Rep. Andrea Olsen (D)
Rep. Ray L. Shaw (R)
Rep. Scott Staffanson (R)
Rep. Kathleen Williams (D)

Members Excused: Rep. Mary Ann Dunwell (D)
Rep. Mark Noland (R)
Rep. Keith Regier (R)

Members Absent: None

Staff Present: Joe Kolman, Legislative Branch
Sherri Row, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 355, 3/9/2015; SB 112, 3/9/2015; SB 160, 3/9/2015

Executive Action: HB 510

00:00:04 Chairman White

EXECUTIVE ACTION ON HB 510

00:01:40 **Motion:** Rep. Fitzpatrick moved that **HB 510 DO PASS**.

Discussion:
00:02:09 Joe Kolman, Legislative Services Division (LSD)
EXHIBIT(nah60a01)

00:02:55 **Motion:** Rep. Fitzpatrick moved that **HB 510 BE AMENDED**.

Discussion:
00:03:12 Joe Kolman, LSD
00:06:33 Rep. Flynn
00:06:47 Chairman White
00:07:21 Rep. Flynn
00:08:02 Rep. Lieser
00:08:26 Chairman White
00:08:45 Rep. Lieser
00:09:00 Chairman White
00:09:08 Joe Kolman, LSD
00:09:29 Rep. McConnell
00:09:45 Chairman White
00:10:39 Joe Kolman, LSD
00:10:58 Rep. McConnell
00:11:58 Rep. Flynn
00:12:16 Chairman White
00:12:26 Joe Kolman, LSD
00:12:40 Rep. Zach Brown left
00:12:52 Chairman White
00:12:55 Joe Kolman, LSD
00:13:08 Chairman White
00:13:24 Rep. Lieser
00:13:59 Rep. Regier arrived
00:14:18 Rep. Court
00:14:38 Joe Kolman, LSD
00:14:47 Rep. Olsen
00:15:05 Chairman White
00:17:06 Rep. Flynn
00:17:45 Rep. Williams
00:18:07 Joe Kolman, LSD
00:18:14 Rep. Williams

00:18:26 **Vote:** Motion carried 16-2 by roll call vote with Rep. McConnell and Rep. Williams voting no. Rep. Zach Brown, Rep. Dunwell and Rep. Noland voted by proxy.

00:19:45 **Motion:** Rep. Fitzpatrick moved that **HB 510 DO PASS AS AMENDED**.

Discussion:
00:19:52 Rep. Williams
00:21:14 Chairman White
00:21:49 Rep. Lieser

00:22:29 **Vote:** Motion carried 11-7 by roll call vote with Rep. Zach Brown, Rep. Court, Rep. Dunwell, Rep. Lieser, Rep. McConnell, Rep. Olsen and Rep. Williams voting no. Rep. Zach Brown, Rep. Dunwell and Rep. Noland voted by proxy.

HEARING ON SB 355

Opening Statement by Sponsor:

00:24:12 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 355, Revise brownfield site clean up eligibility laws.
EXHIBIT(nah60a02)

Proponents' Testimony:
00:26:41 Rep. Smith, HD 31
00:27:13 Jim Atchison, Southeast Montana Development Corporation
00:29:51 Jenny Chambers, Department of Environmental Quality (DEQ)
00:32:54 Jason Rittal, Eastern Plains Economic Development Corporation

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:35:20 Rep. Williams
00:35:47 Jenny Chambers, DEQ
00:37:32 Rep. Williams
00:37:50 Jenny Chambers, DEQ
00:38:52 Rep. Williams
00:39:11 Jenny Chambers, DEQ
00:39:27 Terry Wadsworth, Department of Environmental Quality (DEQ)
00:40:08 Rep. Dunwell arrived
00:41:19 Chairman White
00:41:36 Terry Wadsworth, DEQ
00:41:57 Chairman White
00:42:41 Terry Wadsworth, DEQ
00:44:02 Chairman White
00:45:03 Terry Wadsworth, DEQ
00:45:33 Rep. Lieser
00:46:17 Jenny Chambers, DEQ
00:47:32 Rep. Williams
00:47:48 Joe Kolman, LSD

00:47:57 Chairman White
00:48:00 Joe Kolman, LSD

Closing by Sponsor:
00:48:16 Sen. Ankney

HEARING ON SB 112

Opening Statement by Sponsor:

00:50:48 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 112, Require TMDL development for certain water bodies.

Proponents' Testimony:
00:53:26 Aimee Grmoljez, Arch Coal
00:54:23 Chris Stonebeck, Arch Coal
00:59:42 Bud Clinch, Montana Coal Council
01:01:44 Leo Berry, Great Northern Properties
01:02:38 Aimee Grmoljez, Montana Chamber of Commerce

Opponents' Testimony:
01:03:04 Steve Muggli, Northern Plains Resource Council, self
01:14:55 Anne Hedges, Montana Environmental Information Center (MEIC)

Informational Testimony:
01:23:11 George Mathieus, Department of Environmental Quality (DEQ)

Questions from Committee Members and Responses:
01:23:38 Rep. Dunwell
01:24:32 George Mathieus, DEQ
01:25:08 Rep. Dunwell
01:25:36 George Mathieus, DEQ
01:26:36 Rep. Lieser
01:27:07 George Mathieus, DEQ
01:29:02 Rep. Lieser
01:29:20 George Mathieus, DEQ
01:30:06 Rep. Bob Brown
01:30:49 George Mathieus, DEQ
01:31:27 Rep. Bob Brown
01:31:43 George Mathieus, DEQ
01:32:20 Rep. Williams
01:33:11 George Mathieus, DEQ
01:34:21 Rep. Williams
01:35:35 George Mathieus, DEQ
01:36:31 Rep. Court
01:37:24 George Mathieus, DEQ
01:37:29 Rep. Court

01:37:52 George Mathieus, DEQ
01:38:55 Rep. Shaw
01:40:13 Bud Clinch, Montana Coal Council
01:42:18 Rep. McConnell
01:43:14 George Mathieus, DEQ
01:43:48 Rep. McConnell
01:44:41 George Mathieus, DEQ
01:45:16 Rep. Staffanson
01:45:44 Bud Clinch, Montana Coal Council
01:46:45 Rep. Staffanson
01:46:56 Bud Clinch, Montana Coal Council
01:48:11 Rep. Flynn
01:48:57 Steve Muggli, Northern Plains Resource Council
01:50:43 Rep. Dunwell
01:51:39 George Mathieus, DEQ
01:52:27 Rep. Dunwell
01:53:10 George Mathieus, DEQ
01:53:18 Rep. Williams
01:54:15 George Mathieus, DEQ
01:56:34 Rep. Williams
01:57:26 John North, Department of Environmental Quality (DEQ)
01:58:09 Rep. Williams
01:58:21 George Mathieus, DEQ
01:59:44 Rep. Olsen
02:00:31 George Mathieus, DEQ
02:00:43 Rep. Olsen
02:01:09 George Mathieus, DEQ
02:01:18 Rep. Olsen
02:02:24 George Mathieus, DEQ
02:02:55 Rep. Court
02:03:19 George Mathieus, DEQ
02:03:32 Rep. Court
02:03:36 George Mathieus, DEQ

Closing by Sponsor:
02:04:23 Sen. Ankney

HEARING ON SB 160

Opening Statement by Sponsor:

02:07:00 Sen. Duane Ankney (R), SD 20, opened the hearing on SB 160, Add definitions for natural condition of stream.

02:08:06 Rep. Jerry Bennett takes over chair

Proponents' Testimony:
02:08:44 Chris Stonebeck, Arch Coal

02:10:22 Aimee Grmoljez, Arch Coal, Montana Chamber of Commerce, Montana Petroleum Association
02:10:43 Bud Clinch, Montana Coal Council
02:11:05 Leo Berry, Great Northern Properties

Opponents' Testimony:
02:12:00 Steve Muggli, Northern Plains Resource Council, self
02:14:11 Anne Hedges, MEIC

Informational Testimony:
02:15:56 George Mathieus, DEQ

Questions from Committee Members and Responses:
02:16:17 Rep. Lieser
02:16:41 Chairman White resumes chair
02:17:25 Sen. Ankney
02:17:30 Rep. Lieser
02:17:44 Rep. Olsen
02:18:14 Anne Hedges, MEIC
02:18:37 Rep. Williams
02:19:01 George Mathieus, DEQ
02:19:34 Rep. Williams
02:19:53 George Mathieus, DEQ
02:20:13 Rep. Dunwell
02:20:50 John North, DEQ

Closing by Sponsor:
02:21:48 Sen. Ankney

02:23:07 Chairman White
02:23:30 Sen Ankney
02:24:04 Chairman White
02:24:18 Rep. Lieser
02:24:50 Chairman White
02:25:02 Joe Kolman, LSD
02:25:31 Chairman White
02:25:35 Joe Kolman, LSD
02:25:42 Chairman White

ADJOURNMENT

02:26:22 Adjournment

_____
Sherri Row, Secretary

sr

Additional Documents:

EXHIBIT(nah60aad.pdf)

EXHIBIT 2
DATE 3/23/2015
SB 355

Amendments to Senate Bill No. 355
2nd Reading Copy

Requested by Senator Duane Ankney

For the House Natural Resources Committee

Prepared by Sonja Nowakowski
March 23, 2015 (12:50pm)

1. Title, page 1, line 4.
Strike: "REVISING"
Insert: "ESTABLISHING REQUIREMENTS FOR"
Following: "USE"
Insert: "AND REIMBURSEMENT"
Following: "FEDERAL"
Insert: "PETROLEUM"

2. Title, page 1, line 5.
Strike: "BROWNFIELDS SITES"
Insert: "PETROLEUM TANK RELEASE SITES"
Following: "MONTANA"
Insert: "PETROLEUM"

3. Title, page 1, line 11.
Following: "DEPARTMENT"
Insert: "AT CERTAIN PETROLEUM TANK RELEASE SITES"
Strike: "SECTION"
Insert: "SECTIONS 75-11-307 AND"

4. Page 1, line 16.
Strike: everything after the enacting clause
Insert: "NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Petroleum Brownfields Revitalization Act"."
Insert: "NEW SECTION. **Section 2. Findings and intent -- purposes.** The legislature finds that:

(1) real properties exist across the state where the stigma of petroleum contamination hinders the development or best use of the property. These petroleum-contaminated properties may be eligible for petroleum brownfields funding.

(2) the cleanup of petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to immediately address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(4) the department should encourage the use of federal

brownfields money obtained by grant recipients for assessment and remediation at eligible petroleum brownfields sites and to leverage federal funds and limit costs imposed on Montana citizens."

Insert: "NEW SECTION. **Section 3. Definitions -- application.** (1) The definitions used in [sections 1 through 6] are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization Act, Title II of Public Law 107-118.

(2) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) "Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated, or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and is not subject to a response under the federal Oil Pollution Act.

(i) "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

(j) "Viable responsible party" means a responsible party who is determined by the department in accordance with [section 4] to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site."

Insert: "NEW SECTION. **Section 4. Viability.** (1) For the purpose of determining the viability of a responsible party, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of the petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is a grant recipient's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party."

Insert: "NEW SECTION. **Section 5. Brownfields site eligibility at petroleum tank release sites -- determinations and**

limitations. (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)) or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4)(a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible for petroleum brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site."

Insert: "NEW SECTION. **Section 6. Use of petroleum brownfields funding acquired by state -- limitations.** Prior to expending federal funds awarded to the state for the purpose of assessing or cleaning up petroleum tank release sites that are eligible for petroleum brownfields funding from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title

II of Public Law 107-118, the department shall make a reasonable effort to coordinate with a grant recipient who may intend to expend federal brownfields funding to assess or remediate eligible petroleum brownfields sites in the grant recipient's brownfields target area and to ensure that the grant recipient is not intending to expend petroleum brownfields funding at the same eligible brownfields sites."

Insert: "Section 7. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508(3)(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank

release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, including a grantor; ~~and~~

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) costs that the board has determined are not actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of

subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

{ *Internal References to 75-11-307:*
75-11-302x *75-11-308x* }"

Insert: "Section 8. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under

75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department, subject to [section 5(4)(b)], may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and

implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

{ *Internal References to 75-11-309:*
75-11-307a *75-11-307a* *75-11-312x* *75-11-312x*

75-11-318x 75-11-318x 75-11-508x 75-11-508x }"

Insert: "NEW SECTION. **Section 9. {standard} Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 6]."

Insert: "NEW SECTION. **Section 10. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Insert: "NEW SECTION. **Section 11. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Insert: "NEW SECTION. **Section 12. {standard} Effective date.** [This act] is effective on passage and approval."

Montana State Legislature

2015 SESSION

ADDITIONAL DOCUMENTS
May include the following:

Business Page
[Signed by Chairman]
Roll Call
Standing Committee Reports
Tabled Bills
Fiscal Reports
Rolls Call Votes
Proxy Forms
Visitor Registrations

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**
***Witness Statements that were not presented as exhibits.**

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BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
64th LEGISLATURE - REGULAR SESSION

HOUSE NATURAL RESOURCES COMMITTEE

Date: Monday, March 23, 2015
Place: Capitol

Time: 3:00 PM
Room: 172

BILLS and RESOLUTIONS HEARD:

SB 355 - Revise brownfield site clean up eligibility laws - Sen. Duane Ankney
SB 112 - Require TMDL development for certain water bodies - Sen. Duane Ankney
SB 160 - Add definitions for natural condition of stream - Sen. Duane Ankney

EXECUTIVE ACTION TAKEN:

HB 510 Do pass as amended

Comments:

REP. Kerry White, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

NAT. RESOURCES COMMITTEE

ROLL CALL

NAME	PRESENT	ABSENT/EXCUSED
REP. ED LIESER, VICE CHAIRMAN	✓	
REP. JERRY BENNETT	✓	
REP. BOB BROWN	✓	
REP. ZACH BROWN	✓	
REP. VIRGINIA COURT	✓	
REP. MARY ANN DUNWELL		✓
REP. STEVE FITZPATRICK, VICE CHAIRMAN	✓	
REP. KELLY FLYNN	✓	
REP. THERESA MANZELLA	✓	
REP. NATE MCCONNELL	✓	
REP. DALE MORTENSEN	✓	
REP. MARK NOLAND		✓
REP. ANDREA OLSEN	✓	
REP. KEITH REGIER		✓
REP. RAY SHAW	✓	
REP. SCOTT STAFFANSON	✓	
REP. KATHLEEN WILLIAMS	✓	
REP. KERRY WHITE, CHAIR	✓	

18 MEMBERS

MONTANA House of Representatives
Visitors Register
HOUSE NATURAL RESOURCES COMMITTEE

Monday, March 23, 2015
SB 355 - Revise brownfield site clean up eligibility laws
Sponsor: **Sen. Duane Ankney**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
JIM ATCHISON	SE MT DEVELOP.	X		
Jason Rihal	Eastern Plains EDC	X		
Jenny Chambers	MT DEQ	X		
~~Art Hayes MT~~	~~Yellowstone River Water Assn~~		-	
Rep Bridget Smith	H031	X		
Terry Wadsworth	Petro-Fund			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to issuance of notes authorized by the electors of the district on or after November 1, 2014.

Approved April 24, 2015

CHAPTER NO. 296

[SB 355]

AN ACT ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Petroleum Brownfields Revitalization Act".

Section 2. Findings and intent — purposes. The legislature finds that:

(1) real properties exist across the state where the stigma of petroleum contamination hinders the development or best use of the property. These petroleum-contaminated properties may be eligible for petroleum brownfields funding.

(2) the cleanup of petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to immediately address all petroleum tank release sites in Montana in a timely and comprehensive manner; and

(4) the department should encourage the use of federal brownfields money obtained by grant recipients for assessment and remediation at eligible petroleum brownfields sites and to leverage federal funds and limit costs imposed on Montana citizens.

Section 3. Definitions — application. (1) The definitions used in [sections 1 through 6] are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization Act, Title II of Public Law 107-118.

(2) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

(f) "Potentially liable person" means a grant recipient who:

(i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum or petroleum product at the site;

(ii) exacerbated existing petroleum contamination at the site; or

(iii) failed to take reasonable steps with regard to petroleum contamination at the site.

(g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(h) "Relatively low risk" refers to a petroleum tank release site that is not being assessed, investigated, or cleaned up by the department using funds from the federal leaking underground storage tank trust fund and is not subject to a response under the federal Oil Pollution Act.

(i) "Responsible party" means:

(i) a person who is responsible for conducting the assessment, investigation, and cleanup at a petroleum tank release site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of the petroleum tank release site; or

(ii) a current owner of a petroleum tank release site who:

(A) dispensed or disposed of petroleum or petroleum product contamination at the site;

(B) exacerbated existing petroleum contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum by others took place; or

(D) failed to take reasonable steps with regard to petroleum contamination at the site.

(j) "Viable responsible party" means a responsible party who is determined by the department in accordance with [section 4] to have the financial capability to conduct the assessment, investigation, or cleanup activities at a petroleum tank release site.

Section 4. Viability. (1) For the purpose of determining the viability of a responsible party, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of the petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is a grant recipient's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party.

Section 5. Brownfields site eligibility at petroleum tank release sites — determinations and limitations. (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible

for petroleum brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards required by the department and financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and allow for the use of federal brownfields funding at the petroleum tank release site.

Section 6. Use of petroleum brownfields funding acquired by state — limitations. Prior to expending federal funds awarded to the state for the purpose of assessing or cleaning up petroleum tank release sites that are eligible for petroleum brownfields funding from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, the department shall make a reasonable effort to coordinate with a grant recipient who may intend to expend federal brownfields funding to assess or remediate eligible petroleum brownfields sites in the grant recipient's brownfields target area and to ensure that the grant recipient is not intending to expend petroleum brownfields funding at the same eligible brownfields sites.

Section 7. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508(3)(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party*, including a grantor*; ~~and~~

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) costs that the board has determined are not actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person*, including a grantor,* as an agent to receive the reimbursement *for eligible costs incurred by the person* if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer *or grantor* pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer *or grantor*:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund *unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor*; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 8. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs — corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department*, subject to [section 5(4)(b)],*

may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(h) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(i) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written

determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the

board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 6].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2015

CHAPTER NO. 297

[SB 384]

AN ACT REQUIRING THAT CERTAIN NOTICES OF NO CONTACT BE ISSUED ONLY AFTER AUTHORIZATION BY A COURT OF COMPETENT JURISDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice of no contact. (1) Except as provided in 45-5-209, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord may only be authorized pursuant to an order of no contact issued by a court of competent jurisdiction if the person receiving the notice of no contact is acting in accordance with the provisions of Title 70, chapter 24, 25, or 33.

(2) Except as provided by 45-5-209 or this section, or if issued pursuant to an order of protection issued by a court of competent jurisdiction, a notice of no contact to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord is invalid.

Section 2. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 70, chapter 33, and the provisions of Title 70, chapter 33, apply to [section 1].

Approved April 24, 2015